

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Foreign Labor Certification
	CORRESPONDENCE SYMBOL OFLC
	DATE April 6, 2010

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 20-09
TO: STATE WORKFORCE AGENCIES
FROM: JANE OATES *Jane Oates*
Assistant Secretary
SUBJECT: Fiscal Year (FY) 2010 Foreign Labor Certification Planning Guidance

1. **Purpose.** To provide guidance for the funding and management of FY 2010 annual grant allocations for Foreign Labor Certification (FLC) programs.
2. **References.**
 - Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1101(a), 1182(a)(1), (a)(7)(B)(iii), (l), (n), and (t), 1184(c), 214(a)(1), (c), (i), and 1188.
 - Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands, 48 U.S.C. 1801
 - Northern Mariana Islands Covenant Implementation Act, Pub. L. 94-241, Section 302.
 - Consolidated Natural Resources Act, Pub. L. 110-229, 122 STAT, 865, Title VII – Northern Mariana Islands, Subtitle A-Immigration, Security, and Labor.
 - Wagner-Peyser Act, 29 U.S.C. 49f(d)
 - Consolidated Appropriations Act, 2010, Division D, Pub. L. 111-117
 - U.S. Citizenship and Immigration Services Regulations at 8 CFR Parts 214 and 274A
 - 20 CFR Parts 655, 656 and 658
 - 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
 - OMB Circular No. A-102, Grants and Cooperative Agreements with State and Local Governments
 - Employment and Training Administration (ETA) Handbook No. 385, Wage Finding Process, August, 1981
 - Guide for Employment Service Reimbursable Grant Activities
 - Domestic Agricultural In-Season Wage Finding Process
 - Training and Employment Guidance Letter No. 04-06

Subject: Plans to Phase out Penalty Mail Costs for “Employment Security” Programs and Availability of Supplemental Budget Funds for Conversion to Commercial Mail Methods

RESCISSIONS None	EXPIRATION DATE Continuing
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3. **Background.** The purpose of this Training and Employment Guidance Letter (TEGL) is to define the roles State Workforce Agencies (SWAs) play in programs administered by the Office of Foreign Labor Certification (OFLC), provide SWAs with planning figures for funding that will be allocated to support FLC activities, and set forth the necessary actions to request the funds and to comply with the grant.

SWAs must submit the required information and documents set forth in the attachments to this TEGL, which shall constitute the FY 2010 Annual Plan, and must agree to be bound by the terms set forth by OFLC in its FY 2010 Foreign Labor Certification Grant Guidance.

The Department's FLC programs have experienced and will continue to experience a number of changes over the course of FY2010. As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) became subject to U.S. immigration laws. Consequently, the allocations pertaining to this grant include CNMI. As of January 1, 2010, prevailing wage determinations became centralized in the National Prevailing Wage and Helpdesk Center (NPWHC) and are no longer performed by the SWAs under the PERM, H-1B, H-1B1, and E-3 programs.¹

Lastly, the Department recently amended its H-2A regulations through a Final Rule issued on February 12, 2010, with an effective date of March 15, 2010. The Final Rule makes some changes to SWA responsibilities under the H-2A program. Therefore, in processing job orders and job referrals under the H-2A program, SWAs must follow the regulation in effect at the time the application for H-2A labor certification was submitted.

4. **Action Requested.** SWAs are required to complete the actions listed below.

- Respond to these guidelines within **thirty (30) days** of receipt to ensure allocation of remaining grant funds.
- Identify how program funds would best be used and by splitting the grant allocation between agricultural and nonagricultural activities.
- Inform the OFLC National Office via written communication of the proposed program split that will be used to allocate funds between agricultural and nonagricultural activities.

5. **Mailing Address.** Mail (Federal Express or other means preferred) completed work plans to Mr. Brian Pasternak, Deputy Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW, Washington, D.C. 20210.

6. **Inquiries.** Please direct program questions to Mr. Pasternak and funding questions to Ms. Leticia Sierra. Both may be reached at the Office of Foreign Labor Certification, (202) 693-3010.

¹ As of October 1, 2009, H-2B prevailing wage determinations became centralized in the Chicago National Processing Center and were no longer performed by the SWAs. Since January 1, 2010, H-2B prevailing wage determinations have been performed by the NPWHC.

7. Attachments.

1. Program Planning Guidance and Information Package
2. FLC Annual Plan Workload Supplement
3. Annual Plan Procedures

Program Planning Guidance and Information Package

Introduction

This document provides the necessary guidelines to be used by SWAs to update annual plans and request funds in order to administer their FLC responsibilities.

Wagner-Peyser funding allocations under the State Unemployment Insurance and Employment Service Operations account in Fiscal Year (FY) 2010 are available to States for activities supporting federal administration of FLC programs. An estimate of each SWA's total FY 2010 funding is reflected below.

FY 2010 Annual Plan

To establish and maintain eligibility for FLC grant funding, SWAs must comply with this TEGP and other applicable guidance and regulations of the Department. Upon receipt and approval of the plan at the National Office, OFLC, the Grant Officer in ETA's Division of Federal Assistance will issue a Notice of Obligation (NOO) to provide the balance of funds due to each state from its annual allocation.

SWA Responsibilities

SWAs are responsible for administering grant funds for FLC programs within established guidelines. These responsibilities include:

1. Certifications and Assurances

Regulations require recipients of SWA grants to submit various standard certifications and assurances. These have already been provided under the PY 2009/FY 2010 Wagner-Peyser Annual Funding Agreement and the FY 2009 Foreign Labor Certification Agreement. Current SWA regulations at 20 CFR Part 658, Subpart E (20 CFR 658.400-658.426) cover the complaint and appeals procedures. Regulations at 20 CFR Part 653, Subpart F and 20 CFR Part 654, Subpart E apply to housing inspection activities under the reimbursable grant.

2. Use Mandated Forms for Inter-Agency Communications

SWAs must use the proper forms to ensure uniform communications. These forms include, but are not be limited to, the following:

- **Approved Standard Form: SF-424 (OMB Approval No. 4040.0004 Exp. 03/12/2012)**
- **Form ETA-232 (OMB Approval No. 1205-0017 Exp. 08/31/2010)**
Form ETA-232 is the Domestic Agricultural In-Season Wage Report.
- **Form ETA-232A (OMB Approval No. 1205-0017 Exp. 08/31/2010)**
Form ETA-232A is the Wage Survey Interview Record.

- Other ETA forms that contain a valid Office of Management and Budget (OMB) control number and expiration date.

3. Reporting Responsibilities

The required reports are listed below:

- **ETA-9130 (OMB Approval No. 1205-0461 Exp. 11/30/2012)**
The ETA-9130 is the Financial Status Report and must be submitted by the SWA on a quarterly basis for each fiscal year of funds.
- **ETA-9127 (OMB Approval No. 1205-0457 Exp. 5/31/2012)**
The ETA-9127 is the Quarterly Activity Report and a completed form must be submitted by the SWA on a quarterly basis for each fiscal year. SWAs must correct deficiencies to the form upon request by the OFLC National Office or the department of Labor (DOL) ETA Office of Grants and Contract Management.

Conclusion

Grant funding balances will be issued to the SWAs by the National Office Grant Officer upon receipt and approval of the State's FY 2010 FLC Annual Plan. The FLC Annual Plans are reviewed and approved by the Administrator of the Office of Foreign Labor Certification.

Estimated FY 2010 FLC Funding Levels *

Alabama	\$ 77,005.44	Nebraska	\$103,770.41
Alaska	\$ 70,404.54	Nevada	\$79,566.14
Arizona	\$263,742.00	New Hampshire	\$86,242.70
Arkansas	\$ 81,404.04	New Jersey	\$596,802.34
California	\$2,404,649.45	New Mexico	\$81,404.04
Colorado	\$229,258.06	New York	\$1,358,548.84
Connecticut	\$256,841.43	North Carolina	\$200,590.48
Delaware	\$97,716.11	North Dakota	\$90,081.77
Florida	\$579,951.64	Ohio	\$202,048.05
Georgia	\$539,545.82	Oklahoma	\$77,005.44
Guam	\$66,003.95	Oregon	\$85,613.48
Hawaii	\$66,003.95	Pennsylvania	\$555,432.76
Idaho	\$209,653.51	Puerto Rico	\$66,003.95
Illinois	\$418,812.20	Rhode Island	\$70,404.54
Indiana	\$70,404.54	South Carolina	\$88,668.01
Iowa	\$79,205.73	South Dakota	\$79,205.73
Kansas	\$118,474.57	Tennessee	\$165,152.74
Kentucky	\$324,212.35	Texas	\$932,251.14
Louisiana	\$160,961.22	Utah	\$97,778.83
Maine	\$288,920.75	Vermont	\$100,641.21
Maryland	\$503,251.86	Virgin Islands	\$66,003.95
Massachusetts	\$763,200.59	Virginia	\$838,927.66
Michigan	\$292,475.30	Washington	\$206,622.87
Minnesota	\$99,733.22	Washington, DC	\$116,195.62
Mississippi	\$92,405.53	West Virginia	\$72,604.84
Missouri	\$123,089.23	Wisconsin	\$126,321.97
Montana	\$74,805.14	Wyoming	\$72,604.84
Northern Mariana(CNMI)	\$66,003.95		

* The total SWA grant allocation for FY 2010 is \$15,034,000.

**FY 2010 ANNUAL PLAN
WORKLOAD SUPPLEMENT**

_____ (Insert Agency Name) _____ has prepared the following information and assurances for delivering labor certification/attestation services during FY 2010.

A. Foreign Labor Certification Workload

Category of Labor Certification and Attestation Services	FY 2010 Workload ⁽¹⁾
A. Number of job orders related to H-2A temporary labor certification applications processed and expected to be processed.	
B. Number of prevailing wage surveys conducted and expected to be conducted in agricultural activities.	
C. Number of housing inspections conducted and expected to be conducted in anticipation of H-2A orders.	
D. Number of prevailing wage determinations provided to employers for non-agricultural occupations by the following categories: ¹	
 PERM	
 H-1B	
 H-1B1	
 E-3	
E. Number of Full Time Equivalent (FTE) staff funded by this grant.	
F. Any plans for changes in existing operations, including the prevailing wage program, which will substantially affect negotiated goals.	

(1) *Workload includes actual labor certification/attestation services provided or services planned for the period between October 1, 2009 and September 30, 2010.*

¹ Workload to include all prevailing wage determinations for requests submitted until December 31, 2009.

B. Conducting Housing Inspections

As a condition for receiving funds in support of the Secretary's responsibility under 8 U.S.C 1188, the Agency agrees to schedule and conduct pre-occupancy inspections of housing under the applicable Federal regulations to be furnished to migrant and seasonal farm workers or other U.S. workers, or to nonimmigrant foreign workers admitted to the United States under temporary labor certification programs for temporary employment in agriculture or logging. As stated earlier, the Department recently amended its H-2A regulations through a Final Rule issued on February 12, 2010, with an effective date of March 15, 2010. Therefore, in processing job orders and job referrals under the H-2A program, the SWA must follow the regulation in effect at the time the application for H-2A labor certification was submitted. Accordingly, H-2A applications submitted on or after March 15, 2010, must have employer-provided housing inspected prior to the issuance of the certification.

In accordance with the applicable Federal regulations, employers are required to provide housing at no cost, or public housing, for workers who are not reasonably able to return to their place of residence the same day. The housing must meet the applicable local, state, or federal standards, and be sufficient to house the number of workers requested.

1. Special Assurances.

- The state must adhere to the applicable Federal regulations, and actual housing inspections may be conducted under certain conditions in accordance with OSHA standards at 29 CFR 1910.142, Temporary Labor Camps.
- To the extent practicable, the Agency will be prepared to conduct housing inspections before the filing of job orders, if so requested by the employer.
- To the extent practicable, the Agency will plan to schedule housing inspections before the filing of H-2A applications for those employers who regularly use the H-2A program.

- The Agency (check one) **WILL** **WILL NOT** use an alternative method(s) for conducting pre-occupancy housing inspections (i.e., State Health Department, Agricultural Department, etc.).

Detailed Explanation of Alternative Method (if applicable):

2. Allowable Costs.

- Costs may be attributed to activities in support of tasks described in 20 CFR Part 654 Subpart E, Housing for Agricultural Workers and/or 29 CFR 1910.142, Temporary Labor Camps, and for indirect support as a fair share of overhead.

3. Performance Standards.

- The state's performance will be reviewed according to the applicable Federal regulations and housing standards.

4. Reporting.

- Required reporting of activity as specified on OMB approved ETA forms. Financial reporting will be as specified by ETA.
- States should plan to track the costs associated with conducting pre-occupancy housing inspections to assist OFLC in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs.

C. Statement of Work for Agricultural Wage Surveys

As a condition for receiving funds in support of the Secretary's responsibility, the Agency agrees to conduct prevailing wage surveys of agricultural and logging activities in accordance with ETA Handbook No. 385 and all applicable Federal regulations.

1. Special Assurances.

The state must submit to OFLC a plan for the surveys it is scheduling for the coming year. This plan includes all the surveys which will be conducted by the state in the upcoming season. Accordingly, the state's survey targets are based on estimated job order activity to be produced by H-2A applications.

- The state must submit the results of its prevailing wage surveys (ETA form 232) promptly to the OFLC National Office so the correct wage is established for the next cycle of crop activity. Timely submission is critical to ensure release of wage determinations by the National Office well ahead of the crop activity start date.
- All documentation related to wage survey plans and results should be mailed to:

Mr. Ben Orona
Office of Foreign Labor Certification
Employment and Training Administration, USDOL
200 Constitution Avenue, NW
Room C-4312
Washington, DC 20210 Fax: 202-693-2768

2. Allowable Costs.

- Costs may be attributed to tasks described in ETA Handbook No. 385 for crop activities which meet the criteria specified above and for indirect support as a fair share of overhead.

3. Performance Standards.

- The state's performance will be reviewed for its adherence to the procedures for wage surveys in ETA Handbook No. 385. The procedures contained in the ETA Handbook No. 385 require that prevailing wage surveys be conducted for any crop activity that is anticipated in the upcoming season.

4. Reporting.

- Completed surveys will be submitted on the ETA-232. Financial reporting will be as specified by ETA.
- States should plan to track the costs associated with conducting prevailing wage surveys in order to assist OFLC in the allocation of future resources. The costs include, but are not limited to, staff resources, travel expenditures, and administrative costs.

D. Cost of H-2A Temporary Labor Certification Activities

The information contained in the table below is to be taken from available FY 2009 data to estimate the cost of conducting state activities under the H-2A temporary labor certification program, including applications for logging.

1. Costing Sheet (Including logging)

Activity	Total Number	Total Cost	Average Cost ⁽⁵⁾
Housing Inspections ⁽¹⁾			
Prevaling Wage/Practice Surveys ⁽²⁾			
Job Orders Processed ⁽³⁾			
Total Cost of H-2A Activities ⁽⁴⁾			

(1) Housing Inspections:

Include in the total cost estimate: travel time, inspection time, travel mileage, and completion of paperwork. Include in the total, all housing inspections started during the prior fiscal year regardless of the final completion date.

- If housing inspections are done by another organization, estimate the cost that the H-2A portion adds to their total cost and include this amount in the table.

(2) Prevailing Wage/Practice Surveys:

- Include in the total cost estimate the development of the survey instrument, postage, collection of responses, collation of information, and publication of results.

- Include in the total, all surveys started during the prior fiscal year regardless of the final completion date.

(3) Job Orders Processed:

- Include in the total cost estimate the creation and maintenance of files, taking into account the cost associated with receiving and reviewing applications, referring applicants, and releasing orders into inter/intra-state job system.

(4) Total Cost of H-2A Activities:

- Total Cost of Housing Inspections + Total Cost of Prevailing Wage/Practice Surveys + Total Cost of Job Orders Processed.

(5) Average Cost:

- Total Cost of activity/ Total Number of activity.

E. Grant Contact Information

Included below is the point-of-contact for this grant.

Name:	
Title:	
Address:	
Telephone Number:	
E-mail Address:	
Fax Number:	

Annual Plan Procedures

1. Annual Funding Agreement

The current agreement includes the Workload Supplement to encompass all Program Year 2009/Fiscal Year 2010 program activities. Notice of Obligation (NOO) documents for the allotment balances will be issued by the National Office Grant Officer based upon National Office approval of FY 2010 Annual Plans.

2. Annual Plan

The FY 2010 Annual Plan includes an Application for Federal Assistance, SF 424, transmittal letter, plan workload/supplement, and budget information. Consistent with National Office guidelines, negotiations between ETA and the Grantee will determine each state's final annual level of funding for Foreign Labor Certification.

- The FY 2010 Annual Plan will have a performance period of 12 months beginning October 1, 2009, and ending September 30, 2010.
- The grant application package submitted from the states to the National Office Grant Officer should consist of a transmittal letter and one original and two copies of the following:
 - A. Application for Federal Assistance: SF-424, Expiration Date 3/31/2012, OMB Approval 4040.0004. (Grants.gov)
 - B. Annual Budget and Quarterly Funding Plan (SF-424A (Section D only), Expiration Date 7/31/2012, OMB Approval 4040.0006 (Grants.gov)

Note: Please include a budget supplement to explain and list all proposed equipment purchases of \$5,000 or more and any subcontracts.

- C. Annual Plan Workload Supplement.

3. Plan Modifications.

The National Office and the state may jointly modify the FY 2010 Annual Plan including negotiated changes in the plan period and in funding levels during the year. The plan modification requests must include a transmittal letter, a revised annual budget, and the quarterly spending plan. The National Office Grant Officer has the authority to execute funding adjustments where a state is not spending at agreed upon levels. When an adjustment is necessary, a unilateral modification may be issued. In the event that the Secretary of Labor may be required by future legislation or a court order to carry out

other responsibilities not currently anticipated, or in the event that the Department amends its regulations to require states to perform activities which are not set forth in the FY2010 Annual Plan, the states will be requested to submit a modification to the Annual Plan in order to carry out these additional duties.

4. Financial Reconciliation.

After the end of the fiscal year, a financial reconciliation procedure will be conducted to reconcile accounting records maintained by the grantee and the Department of Labor's original accounts. It may become necessary to revise funding levels in the new plan for a particular state when the reconciliation is completed.